

United Food and Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC and FedMart Stores, Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 542, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

FedMart Stores, Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 542, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Cases 21-CD-475, 21-RC-26573, and 21-UC-224

July 13, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

This is a consolidated proceeding under Sections 9(b) and 10(k) of the National Labor Relations Act, as amended. FedMart Stores, Inc., herein called the Employer, filed the charge and amended charge in Case 21-CD-475, alleging that United Food and Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC, herein called Local 1222, had violated Section 8(b)(4)(ii)(D) by threatening to take economic action against the Employer in order to compel the Employer to assign SCORE marking work at certain of its stores to employees represented by that Union rather than to employees represented by Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 542, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 542. A hearing was held on November 4, 5, and 6, 1980, before Hearing Officer Robert G. Chavarry. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. On November 5, during the course of the hearing, Local 542 filed petitions in Cases 21-UC-224 and 21-RC-16573. Thereafter, on November 6, 1980, the Regional Director for Region 21 issued an order consolidating the proceedings in Cases 21-UC-224 and 21-RC-16573 with the hearing already in progress in Case 21-CD-475, and transferring the consolidated proceedings to the Board following the hearing.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are

free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings.

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated that the Employer is a California corporation operating a chain of retail stores in southern California and Arizona. During the past 12-month period, the Employer derived gross revenues in excess of \$500,000 and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California. The parties further stipulated, and we find, that FedMart Stores, Inc., is an employer within the meaning of Section 2(2) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 1222 and Local 542 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED DISPUTE

A. *The Facts*

The Employer operates 15 stores in San Diego County, California. Local 1222 and Local 542 both have collective-bargaining agreements with the Employer covering various employees in these stores. In April 1979, the Employer introduced its SCORE marking system, a new price marking and inventory system, at its Chula Vista store, one of its San Diego County stores. Seven employees were selected to operate the system; of those chosen, five were represented by Local 1222, and two were represented by Local 542. Subsequently, in May or June 1979, Local 542's president and business representative, Jerry Quackenbush, contacted Leland Persons, the Employer's director of employee relations. Quackenbush inquired about the SCORE marking system, and was informed by Persons that the system had been instituted on an experimental basis. Later, at some point prior to September 1979, the Employer's personnel representative, Judy Gieskie, also told Local 1222's business representative, Joe Frichtel, that the SCORE marking system was still an experimental program, limited to the Chula Vista store.

In August 1979, Quackenbush contacted Persons, and told him that Local 542 felt that the SCORE marking system was no longer experimental, that the work was within Local 542's jurisdiction, and that Local 542 would take whatever action was appropriate, including striking, to get the work. On September 17, 1979, the Employer and Local 542 signed a "Letter of Agreement," which, *inter alia*,

amended Local 542's current collective-bargaining agreement to include SCORE marking employees in the bargaining unit. The Letter of Agreement clearly covered all of the SCORE marking employees, regardless of whether they were members of Local 1222 or Local 542. On November 28, 1979, the Employer and Local 542 signed another letter further clarifying the September 17 agreement.

On March 17, 1980, the Employer began to expand the SCORE marking system to other stores; by June 1980, the Employer had instituted the SCORE marking system at 7 of its 15 San Diego County stores. The great majority of the individuals selected to operate the SCORE marking system at these stores were members of Local 1222. See *infra*. By letter dated April 15, 1980, Local 1222 informed the Employer that it was in receipt of the September 17 Letter of Agreement with Local 542, and that the agreement was an erosion of Local 1222's contractual bargaining unit. Local 1222 demanded that the work be returned to Local 1222 immediately. By letter dated April 17, 1980, the Employer disagreed with Local 1222's contentions, arguing *inter alia* that Local 542 had traditionally had a marker classification in its collective-bargaining agreements. On May 7, 1980, Local 1222 informed the Employer of its intention to proceed to arbitration. On May 9, 1980, Local 542 requested that four SCORE marking employees at the Grossmont store be terminated under the union-security provision in Local 542's collective-bargaining agreement for their failure to join Local 542. Subsequently, representatives of the Employer, Local 1222, and Local 542 met, but were unable to resolve the dispute concerning the SCORE marking system.

On September 15, 1980, Local 1222 sent a letter to the Employer, stating that the Employer had taken work traditionally performed by Local 1222 members and assigned it to employees who were then required to join Local 542. Local 1222 stated that this was a contractual violation, and that Local 1222 would picket, strike, or take other economic action unless the Employer remedied the situation within the 10 days. On September 29 and October 6, 1980, the Employer filed its charge and amended charge, respectively, in Case 21-CD-475.

B. The Contentions of the Parties

Local 542 contends that the SCORE marking work performed in the warehouses of the Employer's stores should be assigned to employees represented by Local 542 on the basis of Local 542's collective-bargaining agreement with the Employer, the Employer's assignment, and the skills and

work involved. In the alternative, Local 542 argues that an election should be held in Case 21-RC-16573, or that the existing warehouse unit represented by Local 542 should be clarified to include the SCORE marking employees in Case 21-UC-224.

Local 1222 and the Employer both contend that the SCORE marking work should be assigned to employees represented by Local 1222 on the basis of economy, efficiency, the skills and work involved, company and industry practice, and Local 1222's collective-bargaining agreement with the Employer. Local 1222 and the Employer further argue that the issue involved herein is a work dispute, and that the Board should therefore grant the motion made by Local 1222 and the Employer at the hearing to dismiss both the RC and UC petitions.

C. Applicability of Section 10(k) of the Act

Before the Board may proceed to a determination of dispute under Section 10(k) of the Act, it must be satisfied that there is a reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. On the record before us, we are not satisfied there is reasonable cause to believe that any such violation has occurred in this case.

Although the issues in this case have basically been framed in terms of a work dispute by the parties, it is evident that the dispute herein is not over the assignment of work to one group of employees rather than another within the meaning of Section 8(b)(4)(D). Rather, the dispute has revolved around the question of which local shall represent the employee whom the Employer has chosen, or will choose in the future, to operate its SCORE marking system. Thus, when the Employer signed its September 17, 1979, Letter of Agreement with Local 542, amending Local 542's collective-bargaining agreement to include the SCORE marking employees in Local 542's bargaining unit, no new individuals were then selected to become SCORE marking employees; instead, the SCORE marking employees already employed, most of them members of Local 1222 (see *infra*), were required to become members of Local 542. When Local 1222 subsequently learned of the Letter of Agreement, it never attempted to have the Employer take the SCORE marking work away from the individuals already performing the work and reassign it to new employees. Rather, Local 1222 demanded that the Employer recognize it as the representative of the present SCORE marking employees. Following Local 1222's protests, the Employer stopped requiring SCORE marking employees to join Local

542; meanwhile, the same employees continued to do the SCORE marking work.

It is well established that a dispute within the meaning of Section 8(b)(4)(D) requires a choice between two competing groups.¹ In this regard, the Board has stated:²

There must, in short, be either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group.

* * * * *

A demand for recognition as bargaining representative for employees doing a particular job, or in a particular department, does not to the slightest degree connote a demand for the assignment of work to particular employees rather than to others.

Thus, for the reasons stated above, we conclude that the dispute herein is not over the assignment of work to one group of employees rather than another within the meaning of Section 8(b)(4)(D). Accordingly, since this matter is not a dispute within the meaning of Section 10(k), we shall quash the notice of hearing insofar as it relates to the 10(k) proceeding.

The UC and RC Petitions

On November 5, 1980, Local 542 filed both a UC and an RC petition, seeking to clarify Local 542's existing unit to include the SCORE marking employees, or, in the alternative, to have an election held in a separate unit of SCORE marking employees.³ We find, for the reasons stated herein, that the SCORE marking employees are an accretion to Local 1222's existing unit, rather than to Local 542's warehouse unit, and that Local 542's UC and RC petitions should therefore be dismissed.

As previously noted, the Employer had instituted, by June 1980, the SCORE marking system at 7

of its 15 San Diego County stores.⁴ Before the introduction of this system, under the Employer's old system, employees represented by Local 1222 (hereinafter referred to as "clerks") both inventoried and priced incoming nonfood merchandise, and stocked it on the shelves for customers.⁵ Under this previous system, merchandise was initially received in the store's backroom, where employees represented by Local 542 (hereinafter referred to as "warehousemen") unloaded the trucks, counted pallets, and staged merchandise either in the backroom or on the sales floor. Then, clerks would transport the goods to the sales floor if necessary, open cases and determine whether the delivered merchandise was the same as that which had been ordered, mark prices on the merchandise using a label gun, and stock the merchandise on the shelves.

The SCORE marking system is a computerized replacement for the Employer's old system, which both inventories and marks incoming merchandise. Under the SCORE marking system, merchandise is unloaded and staged in the backroom by warehousemen represented by Local 542, in an area designated as the "remote marking area." This area contains a roller assembly, a "CRT" (cathode ray tube), and marking tables. At this point, SCORE marking employees in various classifications, whose representation is in dispute, process the merchandise. A "sorter" places merchandise on the roller assembly with the computerized label facing the "CRT operator." When the CRT operator receives the merchandise, he keys in certain inventory and price information, obtained from the case label, into the CRT. A machine behind the CRT, called the "remote printer," then prints out the price tickets. Another employee, the "seeder," next removes the tickets from the remote printer and places them in the merchandise case, which is then moved along the roller assembly. Finally, "markers" affix the tickets to the individual items in the case. The merchandise is then loaded onto carts according to store department, and transported by clerks represented by Local 1222 to the sales floor to be stocked on shelves.

FedMart receives two types of merchandise at its store warehouses: (1) FedMart-owned merchandise,

¹ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 222 (Jelco, Incorporated)*, 206 NLRB 809 (1973).

² *Communications Workers of America, AFL-CIO and its District 8 and its Local Union 8519 (The Mountain States Telephone and Telegraph Company)*, 118 NLRB 1104, 1107-08 (1957).

³ Local 542's UC petition proposed the following unit clarification: "All SCORE/CTR [sic] operators and all marker-checkers assigned to the SCORE remote marking area in the Employer's stores in San Diego County added to the existing warehouse unit," excluding "[a]ll other employees, guards and supervisors as defined in the Act, as amended." Local 542's RC petition requested an election in a unit consisting of "[a]ll SCORE/CTR [sic] operators and all marker-checkers assigned to the SCORE remote marking area in the Employer's stores in San Diego County," excluding "[a]ll other employees, guards and supervisors as defined in the Act, as amended."

⁴ Before the introduction of the current SCORE marking system, the Employer instituted a modified SCORE marking system at its Grossmont store (one of the seven San Diego County stores to later receive the current SCORE marking system) on an experimental basis. Unlike the current SCORE marking system, the Grossmont system was only used to prepare tickets for direct delivery goods. There was no remote marking area, or sorters, seeders, and markers, as under the present system. See *infra*.

⁵ The Employer's food merchandise is not at issue herein. Thus, all references to "merchandise" contained *infra* refer to nonfood merchandise.

which arrives on FedMart trucks from FedMart's two central warehouses in Los Angeles and San Diego; and (2) "direct delivery merchandise" (also called "vender merchandise"), which is delivered directly to the store warehouses by other companies. All of the FedMart-owned merchandise goes through the SCORE marking system, and is processed by the SCORE marking employees whose representation is at issue herein. Direct delivery merchandise takes a somewhat different route; tickets for the direct delivery merchandise are prepared by non-SCORE marking employees, but affixed by the SCORE marking employees. When direct delivery merchandise arrives at the warehouse, tickets are prepared in the P.O.S. Room (Point of Sale Room) by an employee called the "location" or "warehouse" accounting clerk. The location accounting clerk uses a CRT, located in the P.O.S. Room, to prepare the tickets.⁶ After the tickets are prepared, they are placed in a folder, which is then picked up by one of the SCORE markers. The marker marks the direct delivery merchandise, and places it on a cart, where it is then taken by a clerk to the sales floor. The P.O.S. Room employees, including the location accounting clerk, are represented by Local 542. Their representation is not at issue.

Both Local 1222 and Local 542 have collective-bargaining agreements with the Employer. Local 1222's "General Sales" agreement with FedMart, which extends from February 28, 1978, to March 2, 1981, provides that the Employer recognizes Local 1222 as the exclusive bargaining representative for "[a]ll selling and non-selling employees employed by the Employer in all of its retail stores located within the geographical jurisdiction of Local 1222 in the County of San Diego, and excluding therefrom, such employees and classifications as provided for in Addendum 'A'" (the section of the agreement which sets forth exclusions from the bargaining unit). Addendum A provides, *inter alia*, in section D(4) that "[a]ll employees covered under a Teamsters contract working within the classifications of warehousing, receiving, maintenance, janitorial, and persons confined to back room produce wrapping only" shall be excluded from the bargaining unit. Addendum A further provides in section C, pursuant to a 1971 agreement between Local 1222 and Local 542, that, while all new additional nonfood stockers used in stocking on the sales floor on or after March 11, 1971, will be covered under Local 1222's collective-bargaining

⁶ Warren Lieb, the manager of one of the San Diego stores, testified that the location accounting clerk spends approximately 4 hours of his shift preparing price tickets. In addition to the direct delivery tickets, the location accounting clerk also prepares tickets when prices are changed on merchandise already on the sales floor.

agreement with FedMart, all Teamsters personnel working at the current time as stockers may continue to do the same job and will continue to work under the Teamsters collective-bargaining agreement. Another section of Local 1222's agreement, appendix A, lists six job classifications covered by the agreement; Classification I includes:

Sales Personnel, Stockers, Markers, Clerks and General Merchandise Cashiers in the following areas: Camera, Radio, Hardware, Paints, Sporting Goods, Cosmetics, Auto Accessories, Liquor, (Major Appliances, T.V., Stereo Components, Furniture [sic] in stores of less than 60,000 square feet), Women's Wear, Infants Wears [sic] and Furniture, Toys, Records, Drapery, Yardage, Millinery, Books, Stationery, Small Appliances, Photo Accessories [sic], Luggage, Garden Shop, Sundries, Health and Beauty Aids, Jewelry, Candy, Costume Jewelry, Silverware, Homewares, Gifts, and Men's and Boy's Furnishings.

Local 542's "Central/Stores Agreement" with FedMart, which extends from March 26, 1979, to March 28, 1982, recognizes Local 542 as the sole collective-bargaining representative "for all employees coming within the classifications covered by this Agreement, employed by Employer at Fed-Mart Stores, Inc. operated stores, store warehouses and The Fed-Mart Corporation Central offices located in San Diego County."⁷ Appendix A, section D, which provides the "RATE SCHEDULE/-BRACKETS FOR STORES," lists the following job classifications:

BRACKET 1: MAINTENANCE, SPOILS, SALES AUDIT, RECEPTIONIST, CHECKER/MARKER

* * * * *

BRACKET 2: COURTESY BOOTH, VAULT, SIGNMAKER, LOCATION ACCOUNTING, P.B.X. OPERATOR

* * * * *

BRACKET 3: SCORE OPERATOR, WAREHOUSE RECONCILER

* * * * *

BRACKET 4: WAREHOUSE PERSONNEL (INCLUDES FORKLIFT, SHIPPING, RECEIVING)

⁷ At the hearing, the parties stipulated that the correct spelling of the Employer's name is "FedMart," with no hyphen.

"Exhibit B," an additional appendix to Local 542's collective-bargaining agreement, sets forth descriptions of various jobs in the central offices and FedMart stores. Exhibit B provides, *inter alia*, the following store job descriptions:

3. *Warehouse:*

- a. All duties associated with store warehouse, shipping, receiving, forklift operation, etc.
- b. Maintain facility and merchandise in accordance with security and safety guidelines.

4. *Checker/Marker:*

* * * * *

- a. Check merchandise against receiving documents.
- b. Mark merchandise.

* * * * *

7. *Location Accounting Clerk:*

- a. Process merchandise transfers.
- b. Reconcile receiving documents and invoices.
- c. Score Operator:
 - 1. Input receiving data to compute.
 - 2. Prepare price tickets.
 - 3. Deduct, via computer, number of items on receiving documents, but not received.
 - 4. Process price changes (punch price tickets).
- d. Acquaint new personnel in all aspect of position.

As noted earlier, Local 542's president contacted the Employer in August 1979, and stated that Local 542 felt that the SCORE marking work was within Local 542's jurisdiction, and that Local 542 would take whatever action was appropriate to get the work. On September 17, 1979, Local 542 and FedMart signed a "Letter of Agreement," which stated in relevant part:⁸

The parties signatory hereto agree to amend the 1979-82 FedMart Central/Stores Agreement as set forth herein.

1. *SCORE/Procedure:*

- a. Bargaining unit employees who are solely assigned to their function as markers or in conjunction with other bargaining unit functions shall receive the hourly progression rates as set forth in Appendix A.

⁸ The remaining portion of this document, as well as the deletions in the two other documents cited in this paragraph, basically concern the "telxon operator" position, which is not at issue herein.

- b. Bargaining unit employees who are assigned as C.R.T. (Terminal) operator shall receive the hourly progression rates set forth in Appendix A, subsection D - Bracket 2. These rates shall be effective September 3, 1979.

It is undisputed that Local 1222 was not informed of this agreement. On November 28, 1979, the Employer and Local 542 by letter further clarified their September 17, 1979, Letter of Agreement as follows in relevant part:

Per our Letter of Agreement signed on September 17, 1979 and our discussions regarding same, it was agreed as follows:

- 1. The SCORE/Marking procedure is currently operational only at FedMart location #256 [the Chula Vista store].
- 2. Employees currently performing Marking and C.R.T. functions at location #256 are listed on the attached sheet which indicates their current union affiliation, rate of pay, and new progression step rate effective 9/3/79.
- 3. In the event these functions are performed on the store sales floor at any store location, currently or in the future, such functions shall be performed by Retail Clerks members as has been past practice.

On April 15, 1980, Local 1222 sent the Employer's director of industrial relations a letter which stated in relevant part:

UFCW, Local 1222 is in receipt of a FedMart Memorandum dated September 14, 1979 [sic] and a *Letter of Agreement* regarding (1) *Score/Marking Procedure . . .* between FedMart Corporation and Teamsters Union, Local 542.

It is our contention that this *Letter of Agreement* is an erosion of UFCW Bargaining Unit - specifically Appendix A, Classification I: "Markers" of our Collective Bargaining Agreement.

The Employer's director of industrial relations responded, by letter dated April 17, 1980, in relevant part:

We disagree with your contention that the letter of agreement with Local 542 is an erosion of your bargaining unit. During our last negotiations with Local 1222, markers were specifically inserted under Classification I to protect the Clerks against Teamsters claiming marking being done on the floor in the event we in fact established a marking crew to re-

place the General Sales Clerks who had been performing that function.

For your information, Teamsters historically have had in their agreements a classification for markers, and the classification was retained in the current agreement with Local 542, again with the intent of protecting the Teamsters' marking area within warehouse functions.

Subsequently, the Employer changed its position, and argued at the time of the hearing that its Letter of Agreement with Local 542 was signed under duress, and that SCORE marking employees should be represented by Local 1222.

In its brief, Local 542 argues, *inter alia*, that the "checker/marker" and "location accounting clerk" classifications in its Central/Stores Agreement cover the SCORE marking employees. Local 542 further argues that its September 1979 Letter of Agreement with the Employer, and subsequent November 1979 clarification of that agreement, clearly establish that the SCORE marking employees are to be covered under Local 542's Central/Stores Agreement. In support of its contentions, Local 542 argues that the location accounting clerk operating the CRT in the P.O.S. Room performs the same functions as the SCORE CRT operator.

We find that the SCORE marking employees are an accretion to Local 1222's bargaining unit. While the technology involved is new to the Employer's operations, the SCORE marking employees perform the same basic functions as Local 1222's bargaining unit employees did under the Employer's previous system; namely, the inventory and price marking of incoming merchandise. Although the location of this work has shifted from the sales floor to the remote marking area in the backroom, the function of these employees is the same. Just as under the previous marking system, SCORE marking employees must be knowledgeable about the Employer's prices, the number of pieces of merchandise in each case, and the correct placement of price tickets. It is significant that the overwhelming majority of employees selected to participate in the SCORE program were members of Local 1222's bargaining unit. According to Employer's Exhibit 18, which summarizes the SCORE hiring, there have been 42 individuals selected to be SCORE marking employees at the 7 stores involved herein; of these individuals, 29 were members of Local 1222, 7 were members of Local 542, 4 were new hires, 1 was a transfer from a nonunion facility, and 1 was a former security guard whose previous union affiliation, if any, is not indicated. Warren Lieb, a manager in one of the Employer's San Diego stores, testified that clerks were selected as

SCORE marking employees because they already possessed the requisite skills, and that it was only necessary to teach them how to use the CRT. Local 542's warehouse employees, on the other hand, are basically unfamiliar with the marking and pricing functions, since their primary functions are to unload trucks, receive merchandise, count pallets, and stage merchandise.

Contrary to Local 542's argument, the fact that direct delivery merchandise price tickets are prepared in the P.O.S. Room by a location accounting clerk represented by Local 542 does not compel a different result. First, there is a difference in the skills required by the location accounting clerk and the SCORE marking employee in operating their respective CRT's. Store Manager Warren Lieb testified that the CRT operator in the P.O.S. Room "is just entering information off of a document telling the computer to print x-amount of tickets," whereas the SCORE CRT operator must be able to spot incorrect case labels in order to help reconcile the Employer's inventory. Thus, while the P.O.S. Room employee simply enters information from invoices to the CRT verbatim, the SCORE CRT operator must be familiar with prices and packaging, like all of the other SCORE marking employees. Second, the CRT function is only one aspect of the location accounting clerk's job, requiring only 4 hours a shift at each store, whereas the SCORE CRT operator's job is a full-time position. Third, it appears that direct delivery merchandise, the only merchandise marked by the location accounting clerk, represents a relatively small portion of incoming merchandise. For example, when the modified SCORE marking system was used on an experimental basis at the Employer's Grossmont store,⁹ direct delivery merchandise constituted only 10-20 percent of the store's merchandise, with FedMart-owned merchandise making up the remaining 80-90 percent. Fourth, when the location accounting clerk completes the direct delivery merchandise price tags, they are not affixed by a P.O.S. Room employee, but rather by a SCORE marker. Thus, for the foregoing reasons, we find that the CRT function in the P.O.S. Room, performed by only one employee at each location, does not compel a finding that the SCORE marking employees are an accretion to Local 542's bargaining unit.

Likewise, we reject Local 542's argument that the SCORE marking employees are covered under its Central/Stores Agreement. Although the "checker/marker" classification was left in the Central/Stores Agreement at the insistence of

⁹ See fn. 4, *supra*.

Local 542, no member of Local 542 (with the exception of several employees covered by the 1971 "grandfather" agreement incorporated in Local 1222's collective-bargaining agreement) has been employed as a FedMart marker for more than 20 years. The "SCORE Operator" referred to in Local 542's Central/Stores Agreement is the location accounting clerk operating the CRT in the P.O.S. Room, who is not part of the SCORE marking system at issue herein; Exhibit B, paragraph 7, of the Central/Stores Agreement, cited *supra*, lists the "Score Operator" function as an aspect of the location accounting clerk's job.¹⁰ Finally, we reject Local 542's contention that the September 1979 Letter of Agreement and subsequent November 1979 clarification, which amended the Central/Stores Agreement, require that the SCORE marking employees be included in Local 542's bargaining unit. Parties cannot by unilateral agreement place employees in one unit when they

¹⁰ Contrary to Local 542's argument, it is clear that the Bracket 3 "Score Operator" classification was not intended to cover the current SCORE marking system CRT operators. First, the SCORE marking system at issue had not been implemented by the Employer at the time that the Central/Stores Agreement was signed. Second, the September 17, 1979, Letter of Agreement signed by Local 542 and the Employer provides in par. 1(b) that SCORE marking system CRT operators will be paid at the Bracket 2—not Bracket 3—rate. Common sense suggests that the parties to the Letter of Agreement would not have included par. 1(b), which amended the Central/Stores Agreement to include the SCORE marking system CRT operators, if they were already covered by that agreement under Bracket 3.

belong in another unit. The determination of questions of representation, accretion, and appropriate unit do not depend upon contract interpretation but involve the application of statutory policy, standards, and criteria. *Marion Power Shovel Company, Inc.*, 230 NLRB 576, 577 (1977).¹¹

For the foregoing reasons, we find that the SCORE marking employees constitute an accretion to Local 1222's General Sales agreement bargaining unit, and that the SCORE marking employees therefore do not constitute a proper accretion to Local 542's Central/Stores Agreement bargaining unit. In view of this finding, we shall dismiss Local 542's UC petition. Since we find that the employees at issue are part of the bargaining unit represented by Local 1222, there is no question of representation with respect to this group of employees; accordingly, we shall also dismiss Local 542's RC petition.¹²

ORDER

It is hereby ordered that the notice of hearing as it relates to Case 21-CD-475 be, and it hereby is, quashed, and that the petitions in Cases 21-UC-224 and 21-RC-16573 be, and they hereby are, dismissed.

¹¹ This is especially so here, where it appears that one of the parties—Local 1222—may have been intentionally excluded from knowledge of the negotiations leading up to these agreements despite its clear interest in the matter.

¹² See *Marion Power Shovel Company, Inc.*, *supra* at 579.